

MAINE HARNESS RACING COMMISSION
MINUTES OF MEETING
January 16, 2014
Gambling Control Board Conference Room
Department of Public Safety Building
45 Commerce Drive, Augusta, Maine

Commission Members Present: Barbara Dresser, Chair, James Tracy, Gary Reed, Dirk Duncan and Michael Timmons.

Staff Members Present: Ron Guay, AAG, Henry Jackson, Miles Greenleaf, Zachary Matzkin and Carol Gauthier.

The minutes for October 17, 2013 were presented to the Commission, but were not reviewed for approval.

ADJUDICATORY HEARINGS:

1. Attorney Guay as the hearing officer gave his advice regarding the rules and the rules would be forcefully implemented. The Commission members should consider mitigation factors if there are violations based on the conduct of the roll out of the rules. These rules were based on the model rules. They came into effect in July they are not long standing rules that had been in place with the Commission and there was a period of education around the new rules and that some of that education period may have been extended. From a legal perspective, his guidance would be that it certainly is within the purview of the Commissioners to consider industry wide mitigation for enforcement of the rules but perhaps on the penalty phase. He thinks the suggestion of what he's hearing is that the Commissioners would deliberate and make recommendations for what types of penalties would be imposed if individuals were found to have violated the rule infractions that are alleged. The best way to proceed would be not to open a hearing and for all the licensees that are on the agenda to understand that this is not a prejudgment of the case. That certainly is not within the purview of the Commissioners, you need to hear evidence. He does think it is within the purview of the Commissioners to say that if you find a violation what types of discipline would we be willing to consider for a case. With that then he thinks it would allow licensees upon a recess to approach the executive director and have a discussion of whether or not consent order would be presented. He would suggest that they have that deliberation first but it would not be a probably a position you'd want to put a licensee when they come up and admit to a violation without knowing what the ultimate disposition would be and then vote to give a consent order. You almost need to authorize Mr. Jackson. The consent order would be a licensee admitting to the facts and that would not occur until the consent order is executed. We would not proceed with a hearing; you would not need to decide the facts because the purpose of the consent order is the licensee would admit to the facts, so he would recommend prior to opening any hearing on any one of these cases you would deliberate whether or not the Commissioners would have some degree of mitigation. You can ask him questions during those deliberations. When he received the agenda, he was trying to figure out how to conduct 10 hearings, and that's one of the advantages of consent agreements. One of the items he would suggest as one of your future business meeting, is clearly your statute contemplates a consent agreement and clearly the statute allows for delegation of certain responsibilities that you hold. For example, the Commission as a whole can delegate to the chair things. Moreover the Commissioners can delegate certain parameters to the executive director. He would suggest to them to have a meeting to have that discussion. For example, if there is an agreement amongst the 5 Commissioners that a violation of a certain drug at a certain repeat level would have a certain degree of consequence

to it with that knowledge that that's what the Commissioners would want to have then it would be possible to have the executive director to call licensees and say he doesn't have authority. As you know, based on discussion with Attorney Peters, only you have the authority for consent agreements. Today we have the licensees here. If we have a discussion and there's some clear direction given to the executive director as a hearing officer that would not be appropriate for him nor any member of the Commission who would hear a hearing, have a discussion with a licensee that's to appear here today. That kind of leaves it to Mr. Jackson. This would be an agenda item that you should consider. But from a process standpoint because what we have, we have the licensees here, we're going to take a minute and we're going to have a negotiation, but the licensees may have been out of state, they may have been in other parts of the state. He is suggesting to you that as a way for it that might be a more efficient way. It's completely up to you folks as Commissioners but that's something to consider. He would suggest having that as a business item. In terms of the mitigations as he has stated before, he thinks when you go into deliberations it's certainly is something that's appropriate; it's certain within your discretion and you certainly can have that mitigation for the industry, that's the key. It would have to be for a certain set of violations for a certain repeat. If the circumstances around this year the release of the rules mid race season the learning curve of the veterinarians and the horsemen, if that all collectively using your wisdom says you know this is the first year and maybe we need to have mitigation; that's certainly a court next year. If we start enforcing the rules more vigorously, he doesn't think that's would be a defect. He doesn't think that's anything that would prevent you next year from being less lenient. The rules give you some degree of discretion anyway. A lot of these rules are guidelines, they're not you shall do this on this case. There is a larger issue and one of the roles of the hearing officer is to give legal advice during deliberations so before deliberations he is running the proceedings, and then once we close the hearing he is not actively involved in drawing evidence out but you can ask him questions about what does this sentence mean what findings do we need to make. Because of that role, he did do some research on the rules anticipating questions during the deliberations and he would suggest before we open the hearings another matter other than the mitigation that has been raised by Commissioner Dresser is he from a legal perspective he would suggest that counts relating to ranitidine and mepreszole. Any rules that find any violations that find there basis in commission rule Chapter 11, section 7 anti-ulcer medications he would suggest that there is sufficient legal probability that upon request today at a hearing if there was a motion made by a licensee for a directed verdict the legal advice that not hearing the evidence so it's inappropriate to give that ruling in advance but the likelihood of his advice is that he would recommend to the Commission that a directed verdict of not sufficient evidence be given. During deliberations he is willing to answer questions as to the reason why, but it's his opinion from a legal perspective that it's unlikely that there will be sufficient evidence introduced today to prove violations of section 11, 7 and he would suggest that if anti-ulcer medication is an area of emphasis and concern for the Commission later on in the agenda today that during the rulemaking discussions he would offer alternatives to the current rule in terms of the enforcement of the anti-ulcer medications. His suggestion if the Commission were to agree as hearing officer of this 10 cases is based on the comments of the chair person that we not open the hearings but that you have two deliberations. The first deliberations is on mitigation and he would suggestion to them before you get to that discussion you may want to have a discussion regarding the prosecution and the dismissal of the anti-ulcer medication because if as a Commission you decide that prosecution of those cases are not to occur today then that limits the scope of your discussion on mitigation. His recommendation to the Commission is prior to opening hearings that you deliberate on those two matters. He would deliberate on the anti-ulcer medication first. Commissioner Dresser asked if there were any questions of Attorney Guay at this point. There were none. She asked for a motion as to the anti-ulcer mediation on today's agenda. Commissioner Duncan made a motion to deliberate on the anti-ulcer medication. Commissioner Timmons seconded the motion. Vote 5-0. Commissioner Tracy was a

little confused and wanted to know if both ranitidine and sulfide both ulcer medications. Commissioner Dresser stated yes. Attorney Guay stated that his recommendation as a hearing officer he would be happy to give his legal analysis. Commissioner Dresser stated to him that that would help them and they would ask questions from there. Attorney Guay stated that if you take a look at section 7 the facts that you need to find in order to find a violation of section 7 is that these medications were used 24 hours prior to post time. He can't tell you what the evidence is going to show because we don't have evidence. He has asked to see a copy of a typical positive finding for ranitidine or for one of these substances and he anticipates that Mr. Jackson would be offering that into evidence. You will notice that the wording of section 7 the violations require that a dose was used up to 24 hours prior to post time. From a matter of a proof matter, this rule was written different for example than section 8. Section 8 there is a violation if there's presence of a substance in the blood of a certain level, and that can be shown by a lab test. The best analogy he would use is this rule is different than section 8 rule on NSAIDs is different than section 7 rule on anti-ulcer medications. The anti-ulcer medication doesn't say that if there is a blood level that it's a violation. It says if the horsemen gave the medication 24 hours before. That would be similar to saying that he would use an analogy of the OUI laws it shall be unlawful for a 200 lbs male to consume 3 beers within an hour. If the State were to prosecute that kind of case they would have to demonstrate proof that the male was 200 lbs and then on that date of the offense that within an hour they had drank 3 beers that is a much more difficult thing to prove than a blood level. Your other rules say that if there is a blood level there is a violation. The important of that is, if he uses his OUI example, He gets pulled over, and he's not sure if they blow into a tube or takes a blood test or whatever they do, but his blood level is .08 whatever the statutory level is. He goes to court and says he had only two beers, 3 wines and he can say all that and it really was only two hours. It really doesn't matter because the violation is the level. The judges say that's very interesting you're drinking history but your blood level was this and that is a violation. It is then incumbent upon the person who's drinking to apply caution. Boy, I wonder if my blood level was .08. It is the same thing he would suggest if your concerned about anti-ulcer medication then he would suggest during your rulemaking that you scientifically get evidence first of all of what level these medications enhance performance because the statute talks about you have the right to enact rules to protect the wagering and the safety of the sportsmen, the betting public and the animals. At what level in the blood of a horse do those conditions exist where the outcome of wagering or the safety of the riders or the safety of the animal is being impaired? It is very unlikely that Mr. Jackson is going to be able to demonstrate evidence unless there is an omission or there is an eyewitness who saw the administration of the drugs in violation of this. From what he has seen, there is not an individualized finding. He would anticipate that you may hear arguments, you may hear the findings themselves of the blood test may have not been enough or the findings of a certain level of ranitidine in the blood of a horse could be effected by other factors and once that type of evidence is presented it would be incumbent upon the State to then as the rule is written now to introduce evidence that's individualized; weight of the horse, size of the horse, medical condition of the horse. Because of that his suggestion is that prosecution of the cases that are docketed today for violations of this section not occur and that they be dismissed and that you take another look at the rule pertaining to the anti-ulcer medication. You would draft it differently and draft it similarly so that the violation would be the presents of the substance in the blood because right now what you need to find is the conduct and you would have to infer the conduct from a result. You would be much better off to say this level of this drug in the blood of a horse on a race day is a violation then the way the rule is written now. He strongly would recommend, you can do a hearing but he thinks it is unlikely that there is going to be sufficient offer of proof sustained upon appeal for a violation of this rule. Commissioner Dresser asked if anyone had questions of Attorney Guay. Commissioner Duncan asked if they had checked with other states. Do they have levels in this rule on ulcer medication? Mr. Jackson stated that the rule that was adopted in June is a result of the

model rules that were adopted by the ARCI and all other jurisdictions basically adopted those. One comment he would make is that the USTA is taking issue with the model rules that were adopted by the ARCI as it relates to some of these medications because the withdrawal times the dosage and the permitted levels were all based on thoroughbred racing rather than standardbred racing. He would caution the Commission in that regard as well because the USTA is now looking at it from a standpoint of the standardbred horse rather than the thoroughbred horse. Commissioner Dresser asked Commissioner Timmons if he had any questions. Commissioner Timmons stated that when we are talking about rulemaking and the time that it takes. He heard what Commissioner Dresser said about starting out the year on March 30th and on March 30th if racing is taking place for a month and we get these same types of issues coming before us; he will not be sitting here wondering what we're going to do about them. He is saying that we need to have the rule in place before so we won't be faced with this same thing in 2014 on any of them because as far as he's concerned anyone that comes forward in order for this Commission to be fair and be fair to everyone that in 2014 when the racing starts now that we have a new rule that we have to get tweaked we've got to get it tweaked before the racing starts in 2014 because if these come before us as violations the way they are right now we'll be up against the same thing. Commissioner Tracy stated that he agreed with Commissioner Timmons and he certainly has to admit that when it comes to these types of medications he knows little about it but as it's in the rules he has to agree that it isn't anything at this point that should be prosecuted. He would make a motion at this point to dismiss the cases that involve this being number 2, 3, 5, 6, 7, 8, 9 and 10 for the reason stated by Attorney Guay and Mr. Jackson. He stated that until we get a level in the blood you could say in certainty is excessive. He doesn't see how we can go forward. Commissioner Duncan seconded. Commissioner Dresser called for a vote. Vote 5-0. Commissioner Dresser read the names of those cases that would be dismissed as Drew Campbell, Jon Chenard, Steve Vafiades for two items, Donna Smith for two items, Marc Tardif and Donna Sprague. Attorney Guay stated that for the record for those cases that were dismissed if you leave now you're not in any jeopardy for default judgment. Those cases will not be prosecuted.

Commissioner Dresser stated that the Commission would deliberate on mitigating factors on the remaining counts and those would be number 1 and 4. She also asked for guidance from Attorney Guay on what they needed to do in order to advise Mr. Jackson what the parameters are. Attorney Guay stated that his recommendation again he thinks the court in the future would be looking at discrimination amongst different licensees so he would perhaps start by make inquiries of Mr. Jackson the precedence that you've set so far this year in terms of warnings and/or consent agreements is just that those would perhaps present a starting point for discussion. Certainly if there's been decisions that have been made in the past and the Commissioners were to feel today that those level of discipline that had been imposed he thinks would be pretty unusual to go backwards in time but certainly would not be outside the curfew. He's not suggesting that you need do that, so therefore he is suggesting and he is not sufficiently learned enough about these particular violations, alleged allegations or the history of the people involved if they've had repeat multiple violations in relations to other cases that have appeared before you. His recommendation is that you make those inquiries of Mr. Jackson. Commissioner Dresser stated that they are faced with well those that received written warnings there's nothing that would be done after the fact anyway and we're not suggesting that we would go back and change things. But we can't go back and fix any lapses that occurred prior to now; we can only consider those and those that were prosecuted to make a determination as to what's fair today for the people on the agenda. Attorney Guay stated that his legal advice is that and this may without doing do diligence on the previous warnings unless there is a consent agreement that has been entered into with a licensee that has been authorized by the Commission a warning is not in lieu of discipline. If the Commission were to find that you wanted to

go back and prosecute cases and it can be shown that in fact that discipline has not been given to those individuals: for example a consent agreement would have a waiver, a waiver of a hearing and until there's a hearing or there's an agreement there's been no discipline. So to say that there's no opportunity to discipline from a legal perspective is not correct; however, keeping in mind that perhaps the intent and of course the court would look at it from what he said from a legal perspective would be a legal argument that would be likely to prevail. However, the court would also take a look at what the intent of the parties were and the understanding of the people. There's legal and then there's issue of equity and the court would also look at the issues of equity and equity being, although legally you may be entitled to do it and what did you do and certainly to the extent that you would base decisions today that in fairness this is what we did even though you would have the ability to take a harsh or legal action as long as you're clear of that, that kind of leeway for the licensees is occurring for the time period for this race season for example or however you want to frame this up and is not precedent for next year then he thinks you have the ability to do that. Commissioner Dresser stated that if we define today that we are talking about a discreet group of individuals who were found to be in violation of. Attorney Guay stated that he would say you would not say a discreet group of individuals because the court would be very sensitive as to discrimination amongst licensees. He said you would have a discreet period of violations irrespectable of which the individuals are. If horsemen violated these rules during this time period the Commissioners would be willing to consider the mitigating factors of, it's a new rule and you're implementing it in the middle of a race season. There may be testimony that you may elicit that there may have been some confusion by horsemen. There may have been some confusion by veterinarians. All of these facts could be considered part of a learning period. He gave an example of where it's not unusual for a law or rule that's put into place where there is a period of time for people who are subject to a law to come up to speed. One that comes to mind is the seatbelt laws. For a while people were saying if you got stopped the law was passed you had to wear a seatbelt. You got pulled over you would get counseling by the law enforcement official. You know we have a seatbelt law. It was made clear to the public that during that time period there was not going to be an aggressive prosecution of violations but then it was made clear to the public after January 1st you get pulled over you don't have your seatbelt on you are going to be cited. So clearly there have been examples that demonstrate that the adoption of rules and the implementation of rules amongst a body that there is a period of time for education. Education includes he would suggest, staff of the Harness Racing Commission and the veterinarian saying you know you got this test result, you know this substance wasn't being previously tested for. You know you got this result you need to be careful. That would be he thinks in the future in front of a court, that's a reasonable action by the staff of the commission. Does that mean in 2014 that same individual has a same result same blood test level, they're going to be able to say now wait a second in 2013 you gave me a warning he should be able to have the same thing. Not any more so then if he had of got stopped on a seatbelt and received education by a state trooper saying you know you don't have your seatbelt on, and I stop you after January 1st you're going to get a fine. He cannot argue that in court. He can never guess what a court will do. It is a similar situation right here. Commissioner Dresser asked if anybody had any questions of Attorney Guay. Commissioner Timmons asked if they were talking about rather case one and case four would be heard today here or would they go to the executive director for consent. Commissioner Dresser stated that they will be heard here today if we don't end up authorizing Mr. Jackson to enter into a consent agreement. Attorney Guay stated that it is his understanding that there is another large group of test results that will be set for hearing. He is going to suggest to you that if there are elements that are industry wide in terms that are going to inform your judgment as to what type of consequence you would like to see for these violations. He is going to suggest to you that you not only consider the facts around one and four but if these are truly industry wide kind of issues and they may be certain classes and you don't care what there's no warning for those, but if there are others and those are

coming down the pike so we don't find ourselves here in February he would suggest to you as a matter of process if you know that next year you're going to have licensees come in and then you're going to discuss them and say you know we would be willing, we're not going to do the hearing but if these people want to do a consent agreement we're not going to do the hearing today if you know that you're likely to repeat that why have the licensees come to a hearing next February. Have that discussion now as part of this discussion. Give some guidance and authority to the executive director to be able to approach those licensees. He doesn't know but his senses are that some of these licensees live different places and some live in Massachusetts and Canada. Your job is not to make it convenient for people who violate the law he completely gets that but on the other hand if you're going to give authority to the executive director and it can be reasonably foreseen that you're going to do that for the next round of cases, he is going to suggest that when you have your deliberations today that you also kind of look forward to those cases as well. Commissioner Dresser asked Mr. Jackson to help them frame up the category that they speak of. She wants to ask him some questions to come up with the framework that we're discussing. We have the medications on today's agenda and those that you're aware of that have been reported to us that will be on the next. Are these or would it be fair to say that these are all either NSAIDs, control medications or class IV medications. Mr. Jackson stated that there are five that are NSAIDs that are pending and there were three that are class IV drugs that are not NSAIDs. They are not an approved NSAID. Commissioner Dresser asked what was the date, what was of expiration date of the last race period. Mr. Jackson stated October 17, 2013. Commissioner Dresser stated that if we were to say that we are making a decision as to a discreet group of violations occurring between October 17 and December 21 involving NSAIDs, control medication and/or class IV medications. She would take it a step further to say that constitutes a first offense and that's something they need to discuss. Does that parameter cover what you foresee that we will have in front of us for the next couple of agendas? Mr. Jackson stated yes. He has preliminary results on the last two weeks of racing, but we don't have any final results on those last two weeks. Commissioner Dresser stated that if we can develop a category that we're willing to consider mitigating factors for. We're not just giving a free pass to everyone only those who fall within this discreet category that we believe we need to pay particular attention to to make sure they're treated fairly. Mr. Jackson stated that the warnings and the advice has been given for the NSAIDs. The control medication program involving the phenylbutazone the first offense was a consultation, the second offense we would prosecute. The NSAIDs were the new ones that were adopted in July has been an issue for the trainer's trying to come into compliance (flunixin). The other class IV drugs that are not permitted would be prosecuted as a regular positive test. Commissioner Dresser stated that there were none. Mr. Jackson stated that there were three. Commissioner Dresser asked how were they handled. Mr. Jackson they were either by consent agreement or they were brought before the Commission. Commissioner Dresser stated that we could further limit this to NSAIDs and control medications. Mr. Jackson stated that the only other category is the corticoid steroids that we were trying to find out when the withdrawal times needed to be. We were doing some research with Dr. Sams with Dr. Matzkin and that was mostly carbinol. Prednisone was not a part of that study so prednisone would be treated as a class IV violation and brought before the Commission. Attorney Guay stated that for clarity. He doesn't understand these drugs. His understanding is giving authority to Mr. Jackson to negotiate settlement agreements regarding cases one and four. That's an agenda item that the Commissioners need to decide whether they want to do or not. He thinks they also have now a related but similar discussion as to for cases that fall within the parameters that previously were warnings prior to a date. He thinks those are two different deliberations and two different discussions. Is he wrong about that? Mr. Jackson stated no you are correct. Attorney Guay stated that he wanted to point out to the Commissioners. He also suggested for the purpose of managing the docket for the next round. It probably would be a very good idea to do have that and give Mr. Jackson the authority to do that. He wants to make sure that perhaps what

we could do as the hearing officer his suggestion is Mr. Jackson if what you're saying is the discussion that you just had would not apply to cases one and four that you would have those deliberations first and that you would have whatever authority you'd like to give to Mr. Jackson allow him to meet with the licensees that are here and then we could deal with the hypothetical group next unless the hypothetical group will take care of one and four. Mr. Jackson stated that he would advise the Commission that both Mr. Lemieux and Ms. MacDonald have asked for an opportunity to enter into a consent agreement rather than appear before the Commission for their violations. Both are first time violations for the individuals. Commissioner Dresser asked why they are not here today. Mr. Jackson stated that Mr. Lemieux lives in Massachusetts and he says he's guilty. Attorney Guay stated that Mr. Jackson is introducing what he may have said to you in terms of his guilt could potentially prejudice the Commissioners if in fact they don't authorize a consent agreement at this point. He is sorry to jump in. If he was to say that Mr. Jackson and I spoke last night and I will take responsible for this. It was unclear to him whether he could grant a continuance or not. Mr. Jackson and he spoke last night and it wasn't clear to him whether or not he could grant a continuance. In other boards the hearing officers make that determination. If they are not here today, he will take some responsibility for that. Commissioner Dresser stated she would suggest is that the two that aren't here today we know we're going to have a group in February, since they're not here today that we do continue them to the February agenda and then we deal with the entire group at one time. Attorney Guay stated that she suggested that you deal with the licensees in February with the licensees here or would you like to have the discussion of the mitigation and authorize Mr. Jackson to approach these two individuals and the other nine for consent agreements. Commissioner Dresser stated that was a good question and that's something we need to discuss as a group to see what everyone would like to do. Commissioner Tracy stated that he thinks it has worked very well over a period of time to give Mr. Jackson leeway to approach these types of cases in regards to a consent agreement. He's always does that with the understanding with the licensees that those consent agreements must come to the full Commission for approval. If they do not approval them, then a hearing would be scheduled. He thinks they should give Mr. Jackson that authority and the final determination would be made by the full Commission as to whether or not we believe that the consent agreement was appropriate. Commissioner Dresser stated that she agreed with Commissioner Tracy but the one thing she would point out is this is going to put us into a position where if for some reason we don't approve that would push us to March before we could do anything. There is a certain benefit to having people in the room when they're on the agenda and she worries if we keep deferring this we are going to be right back where we started. Commissioner Duncan stated that what if the consent agreement between Mr. Jackson and the licensee was made and then approved by the chairman. Then we have two people. It's not fair to the licensee to get thirty days in January and then in March we don't approve it and racing started then they get sixty more. That's not fair to them. Attorney Guay pointed out as a legal matter the attorney general's office needs to sign any consent agreement as well. Commissioner Duncan stated that if the consent agreement was made between Mr. Jackson and the chairman and the licensee, three people instead of two. Attorney Guay stated that the parties to the consent agreement are the Commission, the licensee and the office of the Attorney General. Commissioner Duncan stated that it would still be brought back to the Commission for approval but we'd have representation on the chairman for the Commission. Can that be done? Commissioner Dresser stated that if a consent agreement doesn't end up being agreed to she would then have to recuse herself because she would have information that wouldn't allow her to sit in on a hearing. Commissioner Duncan stated that he is just trying to save time. He'd hate to see a licensee get thirty days in January and in March it's not approved by the Commission. How can you get around that? Commissioner Dresser stated that is why she is thinking it might be to everyone's benefit to have the licensees here for our February meeting and that way we have everyone together we can have the individual meetings like we proposed today and if it doesn't work out we proceed immediately to

hearing. Commissioner Duncan stated that would be the same way in the future. He was looking at the off months is all? Commissioner Dresser stated because we go a month at a time it's not going to be long before we're back into the race season. Commissioner Reed stated that he thought it was important both for the Commission and for the licensees that those licensees that are alleged to have committed a violation be here to defend themselves and present evidence and questions of Mr. Jackson and the Commission. He made a motion to move that these two cases be postponed until the next meeting with notices given to the licensees that if they are not present we would just go forward with the hearing. Commissioner Timmons stated that he had a problem because he didn't understand the process completely before that when the consent agreements come back before them he had a lot of questions and the person representing the Attorney General's office wouldn't let him ask those questions but at least at the hearings where we're all present and the parties were here and he could have got those answers and felt better about it. There were things that he didn't know like how many violations did he have before and all those decisions were made in the consent agreement which as a Commissioner he could ask any questions and he was told several times not to ask Mr. Jackson questions because the case had already been decided. That wasn't a very good feeling. Attorney Guay stated that as a hearing officer he is trying to understand the proposal. We would have the licensees come in and once the hearing starts that's your opportunity to ask people questions. Is his understanding that what your intent to do would be to ask the questions, put on a full hearing and then offer a consent agreement. He guess what his question would be why wouldn't you just deliberate. Commissioner Dresser stated that she thinks what Commissioner Timmons might have been and she doesn't want to speak for him but she thinks he might have been clumping everything together in the process they would do would be to repeat what was proposed here today. We set the parameters and take a recess for the licensees who will be here to meet with Mr. Jackson and then if they don't agree to a consent agreement that is approved by the Commission we immediately precede to hearing and then the questions can be asked of the licensees. Attorney Guay stated purely from a procedural standpoint because his understanding is you're not going to deliberate today to provide guidance as to what type of penalty would occur for example for a first time violation of a class IV, but you will at some point because the licensees are not here. You choose today not do that. Let's pretend that someone is here today and as a hearing officer he is trying to understand how we are going to conduct this process. You deliberate someone's here today you deliberate and you say based on the issues you raised in your opening remarks for violations of class IV NSAIDs that occur from October 17th to December 21st that falls between these parameters. Yes. We are going to issue a warning. That happens today to the extent that other cases there really is not going to be any evidence required to be taken that if these other individuals (nine) were to admit to the facts, were to admit these violations that is really why you have witnesses here is so that you can make a determination whether or not the violations occurred. Your deliberation as to the penalty would be presumably based on your view of the consequence of the conduct meaning a violation of the NSAID rule for first time violator. What would be different in February that you would get from a licensee than the hypothetical licensee who would appear before you today? Commissioner Dresser stated that what she is looking at is to deliberate today to set the parameters as to the two who didn't appear and then deal with that in February, or in February we are going to have the same discussion about the next set of violations or we have to deal with it today in the hypothetical which makes her uncomfortable. If we are going to have this discussion once again in February as to those that are on the agenda, she thinks it makes the most sense to continue these two and have that all done as a group. Attorney Guay stated that he is not suggesting you take either course, but his concern will be that a licensee with the same fact pattern if they had appeared today and you make a determination because it falls and you have to have some clear statement as to why there would be mitigation or deviation in order to prevent licensees in the race year 2014 saying. The court is going to look for some kind of rational basis as to why you would do that for certain violations and that's why you're framing it up; October 17th to December

21st. You do that today this is the rational we find as commissioners that there were issues during October 17th and December 21st. That is a finding that we use and as a result for a violation of class IV first time offense that is the basis for this penalty. In March, he would strongly suggest that you wouldn't change the rules of the game that whatever you come up as a pattern in February would be the same for the cases that you hear in March. Commissioner Dresser agreed. Attorney Guay stated because the licensees are not here today at some point the discussion is going to occur and it will provide precedence for all the violations during that time period. He doesn't think that you could every agenda change the rules of the game. Commissioner Dresser stated that she doesn't want to but she wants to know what class of medications they are dealing with before we start making a blanket statement that we may not want to adhere to. Mr. Jackson stated that the process he has used in the past as far as offering consent agreements to individuals who have violated the rules is that they are more than willing to enter a consent agreement only because they don't want to take the time to appear before the Commission. As he understands what Commissioner Dresser is saying is whether he offers them a consent agreement or not the alleged violator has to appear before the Commission. If that's the case it really undermines his offering any negotiations with the alleged violator. Attorney Guay stated that whether or not the consent agreement would occur that is up to the Commissioners, and that's why he suggested that a future business item and you started the discussion. He would suggest looking at 2014 how are these drug violations going to occur. Does the full Commission want to delegate. The statute clearly allows that. As of today though, however, if the Commissioners don't want to authorize you to negotiate consent agreements you can negotiate consent agreements but he thinks what you're hearing is that as a precondition to a pool to have the individual here. Then you're offer is going to be something that's not going to be able to have any legs. That's certainly within their parameter. His comments are around process. We had a docket of ten people and if the Commissioners have not based on who's sitting in those chairs but saying as a general agreement amongst the five Commissioners that for a violation of NSAIDs because the rule came out in July, and October we would probably say you know we gave warnings in the past and he's not sure what you're going to say but if that's where you're heading then from a process standpoint, as a hearing officers' standpoint if that's going to be the result his comments were they can have people appear and they can say we're not going to offer a consent agreement unless someone is here. That is completely appropriate. His comments were around if you already know what the result is going to be, the penalty is going to be. It's almost like a temporary change of the rule but we're not changing the rule because we're not going through rulemaking. It is a consent agreement; a consent agreement is a voluntary agreement. If a party is willing to volunteer to plead guilty to the violations because I know if I plead guilty this is going to be my consequence. Then there is a certain administrative and he suggests that the Commissioners might want to put this on the agenda. There is certain efficiency to that type of process. If you know what the penalty is going to be and it doesn't matter who's in the chair then say that if someone voluntarily agrees you are going to approve a consent agreement. His concern that he thinks he is hearing is you don't know what the medicines are. Commissioner Duncan stated that's basically a rule is now and that's what they would be basically doing; waiving a right to a hearing. Attorney Guay stated that the question becomes why and what he's hearing now is ok they're not going to bother to show up so they're going to have default judgment and you're going to be able to do what you want. Commissioner Timmons asked on number one and number four you had the discussion but did you already agree to a consent agreement with numbers one and number four. Mr. Jackson stated with his conversation with Mr. Lemieux he called and wanted to know if there was some way possible he would not have to appear before the hearing. He was willing to enter into a consent agreement and waive the right to a hearing. He stated he would ask the Commission to continue his case so that we could negotiate the consent agreement. There were no negotiations at all with either number one or number four given the same opportunity to request for a continuance of their case for the opportunity to negotiate a consent agreement. That would be put before the

Commission but there's no guarantee that would happen. Commissioner Timmons had one other thought in the process of doing the consent agreement an individual could have three substances that could have been listed and they could have had previous violations. That is taken into consideration before you offer a consent agreement. Is that true? Mr. Jackson stated that historically if anybody who has a second or subsequent violation they come before the Commission, he only deals with first, however in the event if there were three violations within a certain period of time a given drug he would offer a consent agreement if it was a first offense as what was similar to what was offered this last year. We would treat the first one as a first time violation and file the other two. That's what he would offer and that is something you would have to agree to and he would tell anybody that he negotiated a consent agreement with the Commission does not have to accept this. Commissioner Dresser stated that she would be curious to know as horsemen, former horsemen let's say you're not on the Commission how do you feel about having to appear before the Commission if you're charged with a drug violation. Is that unfair, is that uncalled for? Commissioner Duncan you particularly have to drive four or five hours to get here. Is it a mere inconvenience that over time has become customary or can we change that. Commissioner Duncan stated that goes to his statement before those licensees have the right to waive a hearing which dismisses them from having to come in front of the Commission; is that right or wrong? Commissioner Dresser stated that's the practice that has been up to now subject to approval by the Commission. Commissioner Duncan stated that's inconvenient if you get caught without a seatbelt on. If you break the law, you can't worry about convenience. Attorney Guay suggested that he is not saying for these types of violations this is the case but having done board and sat on board training and other groups. He thinks this would be the analogy and he doesn't think these violations fit this, but the use of consent agreements are especially indicated for areas that the Commissioners feel are of less importance that come before them. He is not suggesting that violations of the drug policy is that however if there are some elements of that that you say this is cheating and someone might have messed up and that's ok. For those types we really don't need to hear those. Now an analogy he's heard another assistant attorney general use. The other thing you need to understand is the resources of the State, it's the resources of the staff, the resources of the office of the attorney general, office of the veterinarian, and it's more than that. The Commissioners need to decide where are those resources going to be applied and consent agreements you know you have time. Is your time better used on other things and an example he's heard by another assistant attorney general's is there's a river going by and the river is conduct and potential violations and you're standing on the side of the river and you've got a bucket well you got to kind of you can't possibly get everything there unless we have unlimited resources and have hearings on every violation on every matter. As Commissioners it is certainly appropriate for you to say for certain levels and for certain types of conduct we want the executive director to be able to deal with consent agreements. You all have to agree with them and the assistant attorney general has to sign them. It's not just necessarily only for the convenience of horsemen not having to drive down. It's also a resource. As a group you could say for these types of things we don't want to. We are talking about consent agreements in general. Commissioner Duncan stated that personally he is all in favor of consent agreements on a certain level. If the guidelines are in place now and if they are first time and a low level drug or whatever you want to call it; controlled substances. Those things yes as long as we have guidelines in place for the consent agreement. You don't want to come to Augusta every week for a hearing. Commissioner Dresser stated that to speak to Attorney Guay's analogy her goal is to lessen the flow of the river. We want to minimize the number flowing through and she personally thinks that if people get the idea that it is going to be an inconvenience for them it could help to stem behavior somewhat. Commissioner Duncan stated that his whole thing is there can be guidelines set on consent agreement process. Commissioner Tracy stated that he would like to say one more time. He believes the consent agreements are liable and should be done. You can set the parameters such as only first time offenders and that the parameters have to fall within the guidelines

of the rules. In other words, if it says it must be a fine between \$250 and \$1,000 then it's going to be within the parameters of that in order to be done with a consent agreement if it's a first time violation. If he was a licensee and we talk about consent agreement and he agreed to a consent agreement and the consent agreement says that I'm guilty but he has to be there and he decides he doesn't like that consent agreement we're going to have a hearing. Aren't we already tainted with the fact that he said he's guilty? Attorney Guay stated no unless you allow yourself to be. People plead guilty to misdemeanors and very often they will plead guilty to misdemeanors because it's just not worth the time and expense to fight. He would suggest to you for a matter of convenience an individual may say you know what I'm going to admit to it but I really don't think I did anything wrong. We don't know why they would be willing to do it, but the fact of the matter is they're willing to agree to it; a first time violation and that has a consequence because the next time they do something under the rules you're not giving them a free pass but what you're doing is without a hearing you're finding a violation by admission. He would like to point that out. The discussion of when to use a consent agreement is a wonderful discussion. Discussing the mechanics of the consent agreement is not a free pass because under your rules they're admitting that they did something wrong they're admitting to that first violation. Yes having them come in would deter them. He would suggest to you as well the fact they are already going to have a violation on their record and a second violation should be he would hope would be a significant deter as well. Commissioner Dresser stated do we have any suggestions of what we do today right now. As she suggested she would like to continue one and four to February and then do an analysis of that discreet group of violations at that time taking into consideration what all of the violations are. Setup a framework for Mr. Jackson to discuss with them. What the parameters for a potential consent agreement would be and go from there, but she thinks it's important that we have people here. Commissioner Duncan asked if that could be grouped into one motion the guidelines. Attorney Guay stated that he just wanted to be clear that giving Mr. Jackson the authority to negotiate will not occur until February. He doesn't want there to be a misunderstanding. You need to be clear on that. Commissioner Dresser stated that is what they are still discussing. She doesn't know what everybody's thoughts are. You know what hers are. Attorney Guay stated to answer your question yes you can put it all in one motion but that one thing he would suggest in the motion you make clear. When does Mr. Jackson have the discussion with the licensees he would suggest to give clarity to the executive director? Commissioner Duncan made a motion to have hearings number one and number four on the February agenda and at the same time setup the consent agreement guidelines from there on and have that on the agenda as well. Attorney Guay stated that the motion would be to continue hearings one and four and that would get us out of the adjudicatory docket at that point. Commissioner Tracy seconded that motion. Commissioner Dresser stated that we have a motion to continue hearings one and four to the February agenda. Is there any discussion? All those in favor of continuing the cases. It is a unanimous vote. Attorney Guay suggested to them if you want to have people and he knows you haven't made this decision yet but he is going to suggest to you that if you are going to have Mr. Jackson going to have authority to try to work something out before but before you make a motion there are enabling language you might want to consider. If you want to have people come here, and have Mr. Jackson negotiate in February then he would suggest you schedule a new business item for the establishment of the parameters prior to the adjudicatory hearings and then we take a recess to allow Mr. Jackson to negotiate. That would be his suggestion on how you frame up your motion it depends on which way you want to go. Commissioner Dresser stated that was her preference but she will go with what the majority says. Commissioner Tracy stated that he feels that we have basically the parameters or at least he has it in his mind it has to be a first time offense, it has to fall within the parameters of our rulebook as to what the fine is or what the number of days that they're set down. If it meets first time and what the consent agreement comes up to falls between those parameters he thinks they should give Mr. Jackson that immediate authority to do that. He probably will not be here for another

meeting anyway. Perhaps it might be a much more workable situation if Mr. Jackson was given that authority on first time violations and that the fine or the set down had to be within the parameters as outlined in the book for that violation. He thinks within that network you ought to be able to work something out. Commissioner Dresser stated that you might have missed her point as to this discreet group is. She doesn't want to see them follow the penalty schedule in the book because she feels that there are special circumstances that warrant different penalties because of what has happened this year. Commissioner Tracy stated that those special circumstances should be taken up by a full Commission rather than by consent agreement. Attorney Guay stated that his understanding was that the five of you were going to deliberate for those if we hadn't continued and consider what that would have been for those cases for one and four. Commissioner Dresser stated that her preference is to do it all in February. Attorney Guay stated that he knew they were going to make a motion and just to be clear that the motion is going to be that the continued hearings and all the other hearings will be noticed. There will be no if anyone calls Mr. Jackson asking whether they can do a consent agreement you're directing Mr. Jackson to say "no" prior to the February meeting. He wants to be clear for the fairness of the horsemen and the executive director to be extremely clear that if Mr. Jackson is called he is going to say "no" you're going to go in February. We're going to have a business item where you're going to ask Mr. Jackson; we have people on the docket today what are the violations, what are the classes of first offenses so on and so forth. You will deliberate. The licensees will hear that and then you will say as a matter of that business item this is what we would authorize for consent agreements but you're going to have that discussion in February, and you're going to have the people here and hear it. You're not going to have the discussion today and authorize Mr. Jackson to do it. You're going to authorize Mr. Jackson to do it in February. Commissioner Dresser stated based on what's before us at that time. Commissioner Tracy stated that if you have a large agenda such as we had today for adjudicatory hearings and if what he is hearing is correct that you want them all to show up and then perhaps you would authorize Mr. Jackson somewhere meet with five or six different parties to work out the consent agreement. He just doesn't think that's a very workable situation. Attorney Guay stated that you would take a recess to be clear. This group would not be involved in that. That would be a discussion with Mr. Jackson. Commissioner Tracy stated that he understood that but for him to somewhere setup and go out and meet with perhaps four or five different people to come up with parameters of a consent agreement. He doesn't think you're talking about ten minute recess you're not talking about half an hour recess you're going to be talking about a substantial period of time. Commissioner Dresser stated that it is going to be an investment of time on our part. She will fully admit that and personally she's willing to make that investment. Commissioner Duncan stated that under the consent agreement it's going to be a first time the rules going to be cut and dry. Commissioner Timmons stated that we don't know that. Commissioner Duncan stated that if there's the case and the only time it's going to be entered into a consent agreement his understanding is if it's a first time. Commissioner Dresser stated for offenses though the rest of 2013 and within that limited class but we've also got to discuss what range the penalty will be. Commissioner Duncan stated that it may also take some time. Commissioner Dresser stated so that at this point if she understands Attorney Guay we're looking for a motion to add an agenda item at the beginning of the next agenda whereby we would have a discussion to number one to authorize consent agreements as to those on the agenda for that day. Attorney Guay suggested that the discussion be around model language for violations of certain rules for the period of October 17th through December 21st because you don't know what the rules are right now. That would be the agenda item. You will set that so it's the model framework for consent agreements and you would agree to that. That is his suggest so people who get the notice would understand what you guys are discussing because there may be people who aren't licensees who would have a view point and may want to have a discussion. Commissioner Timmons stated that he wanted to make sure the language is going to be correct and he's not positive if he knows how to do that. Attorney Guay

stated that his understanding is that the Commission would like to have business item to discuss the model framework for consent agreements relating to violations of, and this is the tricky part it would be Mr. Jackson Chapter 11 rules is that correct, we don't know and he thinks Commissioner Dresser's point we don't know what these things are today so it is broad. Chapter 11 violations for the time period of October 17th to December 21st. Commissioner Dresser stated they will discuss the delegation of authority and what authority will be delegated as to this particular group. Attorney Guay suggested although with the investment time he thinks the five of you are touching on another issue right now which is delegation and we've heard suggestions from the chair and he thinks they will naturally hit that during your discussions on this agenda item but he would have this as a very discreet agenda item. Commissioner Timmons asked about the last section on authority. Should that be part of the motion? Attorney Guay stated that he would have a different business item. His suggestion is because he's sensing a discussion about delegation under the statute anyways irrespective of October 17th to December 21st but sort of a discussion about delegation. He would suggest you not have that discussion as part of this. Commissioner Dresser asked for a motion. Commissioner Timmons made a motion to have an agenda item to discuss model framework for consent agreements of relation to the violations that just took place regarding Chapter 11 during the time period of October 17th through December 21, 2013. Commissioner Duncan seconded the motion. Commissioner Dresser stated that they had a motion and a second. Any discussion. All those in favor. That's unanimous; 5-0. Now this is the time for us to discuss an additional agenda item which would be and she knows personally prior chairs have been delegated authority, you've been delegated authority and prior executive directors. What we'd like to do and she thinks we've discussed this is lets gather all this together so that we know what has been, what we want to do, we need to have a discussion of that. If you can provide us with a list of what you're aware of and then we can use that as a starting point to go from there. Attorney Guay stated that delegation of what things from Mr. Jackson's institutional knowledge that the chair has done and the executive director is that correct. Commissioner Dresser stated "right". She thinks they are the only individuals that authorization can be delegated to. Mr. Jackson asked if that is to deal with violation of Chapter 11 only. Commissioner Dresser stated no just in general we want to know moving forward who has what authority. Attorney Guay stated that looking at the statute as you know Mr. Jackson there are certain things that the statute contemplates the Commission may delegate and to those areas and he thinks it would be unreasonable especially with the number of cases that you need to prepare in case there is an authority to do consent agreements. He thinks that your understanding of where it is not when it happened he doesn't think there is a lot of value to that because frankly next meeting these five Commissioners need to decide whether in fact those delegations still make sense or there may be additional delegations that need to occur. Commissioner Dresser stated that they are not looking for historical we don't need anything detailed we just want to have a starting point so that we can have a discussion. Attorney Guay stated that he is going to suggest that this is a good thing that the Commission does on a yearly basis. Commissioner Dresser stated she would just encourage Commissioners to be given some thought between now and February as to what sort of framework you'd like to propose and if you come with some ideas hopefully we can speed the process up.

UNFINISHED BUSINESS:

1. Commissioner Dresser stated that the Commission will review and take action on the proposed budget presented by the Western Maine Harness Horsemen's Association for its operations in calendar year 2014. Ray Garnett representing the Western Maine Harness Horsemen's Association is seeking funding pursuant to 8 MRS Section 272-B. Commissioner Dresser stated that the Commission is to take action on a proposed budget, so we should start with having the proposed budget. Mr. Garnett stated that it is the same thing as it was A, B and C. Mr. Jackson stated that the proposed budget was presented to the Commission in October. He stated that all three requirements

of 272-B were presented to the Commission. The budget, the membership vote and the board of directors vote so those were all in order. Commissioner Dresser asked Mr. Jackson to refresh her recollection. Mr. Jackson stated that it was presented to you. We tabled it to a future date and we put it on today's agenda. We did look at the budget. The paperwork that was required in 272-B-2 was presented to the Commission, so the criteria established in rule was met by the WMHHA and presented to the Commission on October 17, 2014. The Commission did not take any action. The Commission did have some questions. Attorney Guay stated that he did not remember the Commission making any findings at all on the request. His recollection is the Commissioners did not make a finding that WMHHA had in fact complied with the rule or complied with the statute. There are threshold legal questions that the Commissioners need to make findings on prior to making a decision. Commissioner Dresser asked Attorney Guay to set up that framework for them and then they can proceed from there. Attorney Guay stated that he does have information in front of him that Mr. Hanley sent in to the Commission that has a budget and the other two sections of 272-B-2 annual budget approval and the letter signed. He is going to suggest that the Commissioners would need to look at those and make a determination whether or not those documents meet the criteria for 272-B-2. His understanding in speaking to Mr. Hanley and he strongly suggested that he be here today because there are potentially some legal issues here that could be potentially discussed and he could be present here to discuss them. I would suggest from a legal perspective you need to look at the sufficiency of the documents submitted and whether they meet 272-B-2 and he thinks also as a threshold matter you need to make inquiry of WMHHA and whether they fit the definition of what a statewide association is. He would suggest that is also a finding that you need to make that WMHHA does fit the definition of an association that comes under this section. He would suggest to you that merely the presentment of documents that would comply with 272-B-2 is not enough. You also need to make a determination whether they are a statewide association. Moreover in speaking with Mr. Hanley and he is not here and Mr. Garnett do you have a written request because anything he says isn't evidence so any discussion that he had with Mr. Hanley is not evidence. But his understanding from speaking to your lawyer that you're seeking funding under 272-B for very discreet track licensees, is that correct. Mr. Garnett stated that he doesn't know if that is correct because the way he reads the statute and it says it very clearly, but he doesn't know exactly where it is, but it says the Commission will make a recommendation on what funds are available for you. He calls you guys the Commission and Mr. Jackson, and quite honestly if you said hey this is fair. He has a horse shortage problem so by them keeping twenty over there year round that has to help. Attorney Guay stated that Mr. Hanley had indicated that he thought they were perhaps seeking funds from a certain number of tracks. As Commissioners you need to look at the plain language of the statute and determine what the intent was and whether or not WMHHA would fall under the definition of a statewide horsemen's association. There are a number of ways you that could look at the language and he would suggest and if you would like to know what those are he could certainly describe from his perspective ways that you could look at the language. He is not going to suggest that you look at it either way, but ultimately the five of you need to look at the language and make a determination. As a lawyer thought, he looks at this and can see a couple of alternative. Commissioner Dresser stated that she thinks this goes back to what they discussed before. We need to know what it is you're looking for so we can approve your budget as our agenda says, we can follow what the statute says, but until we know what it is you want from us it's difficult for us to take any action. Mr. Garnett stated that's not how it's worded in there Commissioner Dresser. It says the Commission will establish what they think is a fair amount or a fair suggestion. Commissioner Dresser stated that so you want us to establish an amount. Mr. Garnett stated that's what it says in the rules. Commissioner Dresser stated that what she is asking for is to know what it is you want from us. That's what she's struggle with. Mr. Garnett stated that Oxford Fair would give us a stipend. If he could walk out of here and be approved and have the stipend from Oxford Fair he would be happy with it. He's not asking for the

other seven fairs or whatever. If he could go back a minute to one of Attorney Guay's things. Here's why and maybe it is his fault, when he came before you asked him how could you prove that you really did the horse state. Two years ago we offered the same insurance as the other group did. We sold some of it; we bought it from a group in Kentucky which is considered the Cadillac of insurance. To him the fact that they bought that insurance and we sold it to their members. That means we're doing business in the State. He can produce that document if he needs to because if we weren't, he doesn't believe they should have been allowed to sell insurance. Attorney Guay stated that if the Commissioners do want to deliberate on this and if you have questions as to you have to ask questions and ask for evidence of Mr. Garnett and he is correct and he does believe one of the take aways to bring back to the Commission was there was evidence that they were a statewide association. He is going to give you a lawyers reading of the language at this point and you folks will need to determine of whether you want to reach the question today, but it may inform you. If you don't want to reach the question today what additional information you might ask the person requesting. First of all, the framework of looking at the language that is the job of the five of you. You look at the language and give meaning to the language. If in your mind the language is clear, and the five of you agree or three fifths of you agree that is sufficient. That is the language until it's challenged in court and then a judge gets involved and decides whether or not you have a basis to find that. He is going to suggest to you is one of the things the judge will look at is the quality of evidence that you have before you before you made a decision in interpreting the statute, and the kind of evidence that courts use when interpreting language for example is legislative intent. He is not sure if he had sent along to Mr. Jackson. He did have the legislative history pulled up for this bill. That is something if the Commissioners would like to look at to try to figure out what a statewide organization meant unless it's obvious to you right now what it means, and whether or not Mr. Garnett's group fits into that. That would be one area that you could look at. The other tools that courts use would be definition. What is a definition of statewide? The first question is you look at the legislative history and you try to define is the intent that it be a statewide organization or not a statewide organization. The next question is what does a statewide organization mean? The statute says that a statewide association of horsemen referred in this section as the association means an association of horsemen whose officers are authorized by the membership to negotiate with a person licensed to conduct racing under 271 on the behalf of the association's membership. Two meanings of that he is going to suggest to you that depending on which way you decide and a lawyer could argue on either side is that a statewide association that even though the conditions of an association negotiating with a specific licensee track exist that is not enough but that association also has to be statewide. You can look to the dictionary of what statewide means. Another alternative reading which is somewhat consistent with what he thought Mr. Hanley had suggested or that his client was looking for is that funding under this section would be means that for any association whether they're statewide or not if they're the party that's bargaining with that licensee that for that licensee that part of the purse would go to that association. That is one possible reading and his understanding from Mr. Hanley was here was probably going to be the argument but it is very unfair and his job is not to argue one case or another. That is one potential reading of the statute. He would suggest to you that if you wanted to have a result that individual associations at individual tracks get money that the only possible outcome perhaps would be that it would be for the track that they're at. He also thinks you need to hit the threshold question because it's your judgment whether any association that deals with any track would get a piece of a purse from any other track in the State of Maine. That's something that you would need to decide whether or not that's what you think the statute means. He would also suggest that you make a determination whether or not the association needs to be statewide as a preliminary matter. If you do think they have to be statewide then you need to have Mr. Garnett convinced you that his organization is statewide. His suggestion in terms of the legal argument is he thinks really the first issue you need to tackle with as Commissioners is whether or you think that the

statute requires that an organization to be statewide and if so what does it mean is his suggestion of your first element of deliberations. Commissioner Tracy asked Mr. Garnett about his membership. Mr. Garnett responded with basically twenty-seven members right now. Commissioner Tracy asked Mr. Garnett if they represent the horsemen at any track in the State of Maine. Mr. Garnett stated that not at present because we aren't certified. Commissioner Tracy asked what is the relationship as far as the Oxford track is? Mr. Garnett stated that they rent the barn and they maintain the grounds and from November to April we do all the plowing as part of their agreement with Oxford Fair people. It says that they rent the barn for \$1,000.00 a month and they do the repairs and pay the electricity. Does that answer your question? Commissioner Tracy asked if it would be your intent if certified to actually go out and try to negotiate with various tracks in regards to representing the horsemen of the State of Maine. Mr. Garnett stated that was his intent but he didn't do that because he hadn't gotten by A, B and C. Commissioner Tracy stated that he had a hard time hiding in trying to look at what you have and what you are doing and the membership that you have and trying to allocate that as what the statute refers to as a statewide association of horsemen. Mr. Garnett stated that he didn't just roll in the first year we established. We've been five solid years. We've made a statewide report. It's up here in the archives somewhere so if those five years didn't establish us as a statewide association. If you don't like Western Maine he would change it to whatever you want. Commissioner Tracy stated that it isn't the name, but with the number of horsemen that we have in the State of Maine and you represent only twenty-seven he finds it very difficult in his own mind to make a finding that you meet the criteria of 272-B of title 8. His interpretation does not favor you. Commissioner Dresser asked Mr. Garnett that he mentioned that he wanted to use the funding for maintenance and this is at Oxford. Mr. Garnett stated yes. Commissioner Dresser stated that she found it hard to believe that the intent of the Legislature was to potentially allow funding by many licensees to support the maintenance of one facility. Mr. Garnett stated that it's not all maintenance. He finds it hard to conceive that certain organizations are allowed. Nobody paid in his group. It's all volunteers. Commissioner Dresser asked how is that representative of a statewide organization, if all of the money would be flowing through to support the maintenance at Oxford. Mr. Garnett stated it's not all for the maintenance. It's laid out for the different things. Attorney Guay stated that he thinks the Chairs question is what elements percentage of the budget is used for statewide activities. Mr. Garnett asked if that was the question. Commissioner Dresser stated yes we will ask that question. Mr. Garnett stated it depends on how you define as statewide. Commissioner Dresser stated more than just Oxford. Mr. Garnett stated they've done things down at Scarborough and we've had promotions down there too. He thought he should be certified first. Commissioner Reed stated that in his earlier remarks he believes he said Oxford would give them the money. What's preventing them from doing so? Mr. Garnett stated that they aren't certified. Commissioner Reed stated that they aren't permitted in your view to make a charitable contribution to your association. Mr. Garnett stated that they'd like them to have the stipend. Commissioner Reed stated that's clear but there's nothing in the Maine statute that says organization A may not give any money to organization B. Mr. Garnett stated that would be double dipping. No organization that he knows on low budget is going to tear off eighteen hundred and say you're nice guys. They made a deal with them for the track. Commissioner Dresser stated that looking at the budget and maybe she's reading this incorrectly but it appears that the vast majority of the expense items that are shown are specific to Oxford Fairgrounds. Mr. Garnett stated he agreed with Commissioner Dresser but he wanted her to show him where in 272 it doesn't say he can do that. Commissioner Dresser stated that's not her job. We're trying to figure out what would constitute a statewide association because we don't have a definition of statewide so we need to ask the questions in our own minds determine what would be fair and she agrees with Commissioner Tracy that we're a long reach away from where we need to be. Commissioner Duncan stated when you say becoming certified to be recognized as an association. He doesn't think that's what the Commission to certify an association of any kind. Commissioner

Dresser stated that Attorney Guay headed them in the right direction before we can make that determination we need to figure out whether or not this group qualifies under the statute and one of the basic requirements is that it needs to be a statewide organization. Attorney Guay suggested you make as a Commission find that a requirement to come under 272-B based on the language before is that they are a statewide organization in order to even be eligible under 272-B. He is saying that is a threshold question you need to meet. Now the way the evidence you know you are asking questions about you're looking for evidence from Mr. Garnett whether or not he is a statewide organization. Certainly to the extent that the budget is sort of a record of their intent of how they're going to spend their money it's sort of a record of intent of where their activities are and he would disagree with Mr. Garnett. It doesn't say that the money can't be used for barns. He thinks what the question is based on the budget does the budget support a factual finding that you are a statewide organization. From a legal perspective 272-B does not prohibit the use of money. Anyone that receives the money under 272-B if they want to put it into barns or whatever he does not see a prohibition. That would not disqualify you the fact that you spend money on barns in his view and that would be the advice he would give to the Commission. Mr. Jackson stated that he would direct his attention to subsection four, each year upon receipt of verification of the information required under subsection two the Commission shall advise licensees of the maximum amount payable to the association under subsection one. Total payments made each year to the association under this section may not exceed the association's budget for that year if the Commission were to approve and move forward who does the Commission notify as to what their requirements are to pay under subsection four. Commissioner Dresser stated that she does not want to speak on behalf everyone else but she's not sure Mr. Jackson that they're going to get to that point today. Attorney Guay stated that is a second level question and it depends on the interpretation of the language, and again he strongly suggested that Mr. Hanley be here because it's not appropriate for him to make legal arguments for anyone before the Commission. His understanding of a legal argument is that in this case Oxford would be the licensee and they would be given notice under. His understanding of a theory they would be association the licensee that would be given notice of entitlement of the purse money. But again that would require the Commission to get further down the pike including a reading of the statute that says that the suggestion there is that you don't need to be statewide; it's enough that you have negotiating position with anyone licensee and for that licensee that association gets the money from that licensee. That is an alternative reading of the statute that Mr. Garnett is not expressing, but he thinks maybe a fundamental basis of why his association could feel that they're entitled to the money; and again his advice, his legal advice to the Commission is ok one could read that but however does the Commission believe it has to be statewide; and if so then you need to look at your definition of what a statewide is and Mr. Garnett would have to demonstrate that his association would meet that. Based on the questions that he's hearing, although the deliberations aren't preceding step by step it would sound like at least several of the Commissioners believe that there is a requirement that it is statewide. He thinks that is why questions are occurring. He doesn't want to look into the minds of the Commissioners but he would suggest that the five of you tackle that question first. Do you think the language requires an association to be statewide before you even come under this section? Commissioner Dresser asked if they could do a quick poll. Attorney Guay stated that they could do that. Commissioner Dresser asked how many Commissioner Members believe the statute does require a statewide organization. That appears to be all of them. How many of us feel that this organization qualifies as a statewide organization. Attorney Guay stated he was going to suggest that after you did your poll now all the questions Mr. Garnett be asked. Now knowing that he has to demonstrate that it's statewide he needs to make arguments why he's statewide. He would suggest that be the next phase. He stated to Mr. Garnett that the Commissioners just found that you have to be statewide although they haven't found but the poll is that they are going to. Mr. Garnett stated that he understood the poll. Attorney Guay stated that it is incumbent upon Mr. Garnett again he's not his

lawyer but as a lawyer advising the Board he's suggesting to them that you need to bring evidence now because of that potential finding that you are statewide. Mr. Garnett stated that if he wasn't statewide why he was able to sell insurance to horsemen in the State that race in the state. He's sure that Mr. Jackson knows that he sold third party liability insurance and nobody ever said one word that we weren't certified. They said in fact that they could buy their insurance from anybody as long as it meets the liability. Why would you let him do that and why would you let him have the five years with his report every year and it goes up here to the Capitol. If you didn't think that was what the intent was. Commissioner Dresser stated that she was a little bit confused. What she believes you were asked is to explain to them why you think you're a statewide organization not to say to us why we aren't. That's not our place. Mr. Garnett stated ok those were the two things he just said because he was allowed to sell the third party liability insurance. Commissioner Dresser asked if that was something that was supposed to be approved by the Commission. Commissioner Tracy stated no. Commissioner Dresser stated that she was confused. Mr. Garnett stated that there are minimum limits to third party liability. Attorney Guay asked Mr. Garnett if it was his understanding that in order to sell insurance that you would have to be an association under 272-B is that your understanding. Mr. Garnett stated he thought that was yes. He also checked it out with the place where he bought the insurance in Kentucky and they said if you're allowed to sell statewide insurance then you're a statewide organization whether you're certified or not. Maybe they don't know. Commissioner Dresser asked if there were any other questions. Commissioner Tracy asked Mr. Jackson if he could tell him approximately how many licensed horsemen there are in the state of Maine. Mr. Jackson stated approximately 1700 and that includes owners, drivers, trainers, grooms, vendors, pari-mutuel employees and officials. Commissioner Dresser asked Attorney Guay if it would be appropriate for them at this point if they have no more questions from Mr. Garnett to make a finding to whether or not we believe this is a state organization or not. Attorney Guay stated that he would suggest two things, ask Mr. Garnett if he has anything else he would like to offer for the record, and he doesn't think it would be inappropriate to also ask for public comment if there is any. This is not an adjudicatory hearing but sort of follow that template. Have him say you asked your questions so that he has the opportunity to give a closing argument. He thinks Mr. Garnett understands the burden he has to meet right now and give him another change to do that, and see if there's anyone else that would like to offer comments so that you would use during your deliberation. Commissioner Dresser asked Mr. Garnett if there was anything else you would like us to know that you believe would help us make a decision. Mr. Garnett stated it would have helped him back in October if he had known he had to meet this burden. It was very unclear. Commissioner Dresser stated that it was also unclear to them in their defense. We were wrestling with what it was that was being asked for. Mr. Garnett stated that he wasn't here 25 to 30 years ago. Attorney Guay stated that he is going to make a comment on the record as legal counsel just to be clear for licensees or any one. When you make a request for action by the Commission, and to say that it is unclear of what the legal requirements are to get what you want in his opinion you are obviously asking the Commissioners to make a determination on your request but for any licensee that comes before the Commission it's not for the Commissioners to make the arguments for the people that appear before the group. For the record he would state he thinks the Commissioners could have made a decision back in October, but they afforded you the opportunity to develop additional information and bring back additional. He appreciates the comments from the Chair but as legal counsel he just wants to be clear it's not up to the Commissioners. It's incumbent upon people coming before the Commission to make their case for what they're seeking. He just wants to be absolutely clear for the record for people who may someday read these minutes or hear these minutes that when you or anyone else comes before the Commission you have to have your basis and you need to know what you're asking for and you need to know what the legal basis is. Mr. Garnett stated that we all have difference of opinions on that and when he saw A, B, C and he took it to two different lawyers they said fill that criteria and they said it

was a slam dunk. Commissioner Dresser asked for public comment. Commissioner Tracy made a motion that given the information that we have and have been provided to them that Western Maine Harness Horsemen's Association does not meet the criteria of a statewide association of horsemen as intended by statute. Commissioner Reed seconded. Commissioner Dresser asked for any discussion. No discussion. She asked for those in favor of the motion. Vote 5-0.

2. The Commission discussed the proposed rule changes for final language and submission for advertising. Commissioner Timmons made a motion that they ask the executive director to draft the changes that have been made in Chapter 11, Sections 2, 8 and 9 as presented by the department veterinarian and published. Commissioner Tracy seconded. Vote 5-0.

Commissioner Timmons made a motion for Chapter 7, Section 8 Preference and Chapter 5, Section 7 be forwarded to Mr. Jackson with the revised suggestions for publication. Commissioner Tracy seconded. Vote 5-0.

Commissioner Timmons made a motion to change and eliminate phenylbutazone in Chapter 11, Section 5 paragraph 2 for publication. Commissioner Tracy seconded. Vote 5-0.

NEW BUSINESS:

1. Commissioner Dresser stated that they are to determine whether the Commission wishes to schedule a disciplinary hearing regarding a complaint filed by the Maine Harness Horsemen's Association regarding the condition of the racetrack at Scarborough Downs on December 6, 7 and 21, 2013. Mr. Jackson stated that we need to be careful of how we approach this today because if you decide to go forward with an adjudicatory hearing with possible ramification of discipline the facts cannot be brought out here. Attorney Guay stated that this is more of a question of the types of matters that the Commission because there's been some discussion the Commissioners want to be more involved with violations. He knows it's difficult to understand what the potential violation is without getting into the facts. Let's say if there's an issue regarding track conditions and not getting into the details of what they may or may not have been. When the Commissioners had previously described wanting to be involved in violations, is this the type of issue that you would wish to do and prosecute. There is a complaint filed by a participant against another participant. He thinks in the past Mr. Jackson you might have had a little bit of discretion in terms of whether or not you would prosecute things or not he doesn't know. Mr. Jackson stated that basically he would investigate to determine whether or not it was an issue to be brought before the Commission. More often than not most of the conditions in the past have been corrected without having to come before the Commission for any disciplinary action. Attorney Guay stated that it was his understanding in this case that there is a request to bring it forward. Mr. Jackson stated there is a request from a complainant that they wish the Commission to address the issue to determine whether or not there should be any disciplinary action taken. Attorney Guay stated that the only matter before you is to decide whether or not to direct the executive director to schedule an adjudicatory hearing or not. The way to look at it is presuming that and you can't presume but presuming that the allegations would be true is this of sufficient gravity that you wish to be having an adjudicatory hearing on at this point. Commissioner Dresser asked what the alternative would be. Attorney Guay stated that the other alternative would be a letter of non-adjudicatory letter of guidance letter from the Commission on the ordinary course of its oversight of the industry putting them on alert of X,Y and Z. The relevant standards of licensing, for example. This is sort of a filtering question. Is this the type of thing that rises to the level of a disciplinary action. In the past he believes the department had a bit of discretion and may have dealt with things in a non-disciplinary manner. Commissioner Dresser asked Mr. Jackson if he was wondering if this is something that he should handle or do you want them to or are you wondering whether this is a matter that needs Commission attention on either level. She just wants to understand where they're headed. Mr. Jackson stated that he is not sure which direction he wants to

go. He thought of going in one direction and he discussed the issue with the complainant and the complainant was very adamant that this come before the Commission for review. He has done some further investigation and rather than scheduling an adjudicatory hearing, maybe a discussion and as Attorney Guay pointed out that there may be a letter if warranted, but once you go into an adjudicatory hearing you've got to make findings and make decisions and then you have to make a determination of whether there should be any penalty imposed. Commissioner Dresser stated that we can make the determination that it doesn't rise to that level. What she worries is if we go the discussion route, we can't go back because they would then be in a position to have all the information that we're not supposed to have. Attorney Guay stated that the only way this would appear before them would be in a form of adjudicatory hearing. Commissioner Dresser stated because we don't have that intermediate body to do that reviewing we have no choice to take it to the next level. Attorney Guay also stated that he would suggest to the Commission to table this item until he can do more research on the complaint. Commissioner Timmons made a motion to table this until the attorney general's office has an opportunity to give them further advice. Commissioner Tracy seconded. Vote 5-0.

REPORTS:

1. Mr. Jackson stated that Mr. Greenleaf has been working with other racing jurisdictions as it relates to medical marijuana. There are very few and there are none that have any rules governing the use of methadone or any of its family members. They are still trying to see if there is anything out there. Commissioner Dresser asked if he had talked with other Commissions to see how they are handling it. Mr. Greenleaf stated that none of them have come across any situations around it other than Washington State and they changed their whole testing ability. He also stated that Michigan would love to work with us when we do it. Attorney Guay asked if you have a general rule that allows for officials at a meet to prohibit the participation of anyone who in their judgment poses a threat. Mr. Jackson stated no. The judges have to conduct a hearing. The judges have no right to prohibit someone from participating without due cause. Attorney Guay asked what if they are stumbling around. Commissioner Dresser stated the Breathalyzer has to be administrated. Mr. Jackson stated the Breathalyzer has to be administrated and that comes under the jurisdiction of the State Racing Steward who reports any violations to the presiding judge and the presiding judge then if it's a driver take him off all of his drives, if it's a trainer they would ask him to leave the paddock, if it's an owner the same thing. Commissioner Dresser asked what if it's not alcohol related. Mr. Greenleaf stated that he talked to the state police and they have these recognition experts and they said they would be more than willing to do a day class on what to recognize and what to look for. Attorney Guay stated that the purpose of your rules as he described for the medication program is to protect the health, safety of people and animals. He stated that if you see someone stumbling around does it really matter if they are on marijuana, methadone or too much cough medicine. He would think a judge or official could say these are my observations based on the conduct of the licensee we prohibited them from participating. That to him is a reasonable rule without having to get into what are they on. Mr. Jackson stated that if it should occur in the paddock, the paddock judge does have the authority to report that to the presiding judge and ask what action he should take. If it involves the health and/or safety of the participants or the horses then he is sure there is something that could be done. Then again it has to be scheduled for a hearing to determine if there should be further action taken. Commissioner Dresser stated that section 48 unfit drivers, the Presiding Judge at any race meeting shall refuse to permit any licensed driver to compete in a race if, in the judgment of such official, he or she is unfit to drive. Mr. Jackson stated that is for drivers only. Attorney Guay stated that the original discussion about the marijuana was operating the equipment under the influence. It is potentially a can of worms but he thinks you already have the ability to prevent people. Mr. Greenleaf stated that whether they have a prescription or not; right. Attorney Guay stated that's right

it doesn't matter. Mr. Greenleaf stated that he thought there were a lot more narcotics out there that are a lot more dangerous than cannabis. Mr. Jackson stated that one of the things they found that it is not a prescription it's a certification for use. Attorney Guay stated that a certification for use of a controlled substance doesn't give permission for someone to drive a rig and an animal impaired in a race. Commissioner Timmons stated that it doesn't have to come here to the commission. All venues have police, fire and rescue and all he does as a leader in one of those is ask the police to get involved and let them deal with it. Let them take them off the grounds.

OTHER BUSINESS:

1. Commissioner Dresser received and read a letter from Becky Allen regarding her father, Donald Richards. Mr. Jackson asked for a moment of silence for Dean Shorty. This was Audrey Shorty's, our resource administrator, husband.
2. Commissioner Dresser prepared and read a statement regarding the adjudicatory hearings that would be heard today on positive tests.

The meeting adjourned at 3:55 p.m.

Respectfully submitted by:
Henry W. Jackson
Executive Director